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No. 06-1637

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IN THE

Supreme Court of the United States

QUINTEZ WREN HODGES,
Petitioner,

v.

STATE OF MISSISSIPPI,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

REPLY MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

Respondent does not address the clear instances of ineffective assistance of counsel and prosecutorial misconduct raised in the Petition for Writ of Certiorari ("Petition"). Rather, Respondent resorts to misrepresentation and obfuscation of the record. For instance, Respondent inexplicably ignores the Mississippi Supreme Court's finding that Petitioner demonstrated his trial counsel's mental illness and drug abuse. Similarly, with respect to Petitioner's claim of prosecutorial misconduct, Respondent simply fails to recognize that the Mississippi Supreme Court never considered Petitioner's evidence of prosecutorial misconduct despite twice being presented with such evidence in violation of Petitioner's due process rights. Petitioner does not attempt herein to rebut each of the errors made in the Brief in Opposition ("Opposition"), but responds only to the most egregious of the misstatements contained therein.

I. THE STATE COURT ERRED IN DENYING MR. HODGES' INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM

In its Opposition, Respondent asserts that the Mississippi Supreme Court rejected Petitioner's "[a]llegations that one of [his] counsel, Michael Miller, *might have* used drugs during" trial and that "[t]he allegation that defense counsel Miller *might have* had mental problems during the time of petitioner's trial has never been shown." (Opp. at 17-18 (emphasis in original).) Nothing could be further from the truth. As demonstrated more fully in the Petition (Petition at 10-20), Petitioner's trial counsel's lack of experience, mental illness, and drug abuse rendered him incapable of providing effective assistance both before and during trial. Indeed, although it discounted the importance of this evidence, developed without the benefit of formal

discovery, the Mississippi Supreme Court noted "[t]his *evidence of drug use and illness* may explain some of Michael Miller's behavior before and during Hodges' trial." App. 30a-31a (emphasis added); *see also id.* at 29a (noting that "Miller was found to be a 'mentally ill person who poses a substantial likelihood of physical harm to himself' and was committed by the Chancery Court of Lowndes County to East Mississippi State Hospital").

With respect to the actual prejudice resulting from trial counsel's ineffectiveness, Respondent asserts that the Mississippi Supreme Court held that Petitioner's claim that trial counsel failed to properly prepare for the sentencing phase of trial was procedurally barred. (Opp. at 20.) Respondent's assertion ignores the Mississippi Supreme Court's treatment of this issue below. The state court discussed the additional evidence submitted in support of Petitioner's post-conviction petition, including the affidavits of numerous family members. *See* App. 24a. The Mississippi Supreme Court made expressly clear that "[w]here Hodges raised ineffective assistance of counsel on direct appeal, and raises it again here, supported by extraneous materials that were not available on direct appeal, our consideration is not barred by res judicata." *See id.* at 21a.[1]

In sum, whether considered under *Strickland* or *Cronic*, this Court should grant the Petition in order to address the Mississippi Supreme Court's denial of relief in contravention of established Sixth Amendment jurisprudence.

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[1] With respect to actual prejudice, Respondent asserts that trial counsel "thoroughly investigated mitigation issues" because five family members testified at sentencing. (Opp. at 24.) Respondent's argument is unsupported by the record and even the Mississippi Supreme Court assumed counsel failed to adequately investigate mitigation evidence while finding a lack of prejudice from such failure. *See* App. at 92a.

II. MR. HODGES' DUE PROCESS RIGHTS WERE VIOLATED BY THE STATE COURT'S MANIPULATION OF PROCEDURAL RULES TO PRECLUDE REVIEW OF HIS CLAIM OF PROSECUTORIAL MISCONDUCT

Respondent does not even attempt to defend the Mississippi Supreme Court's manipulation of its procedural rules to preclude review of Petitioner's prosecutorial misconduct claim. Respondent argues that this claim was "extensively discussed and decided" on the merits on direct appeal and found to be barred by res judicata on post-conviction. (Opp. at 24.) However, Respondent cannot deny that despite twice being presented with this clear evidence of falsity, the Mississippi Supreme Court refused to vindicate Mr. Hodges' due process rights. The hearing transcript submitted by Petitioner both on direct appeal and on post-conviction demonstrates the falsity of both the testimony presented by State at the sentencing phase and the State's theory during that phase. In short, Respondent's resort to procedural defenses ignores the points raised in the Petition and, more importantly, demonstrates their pertinence.

Respondent's argument that Petitioner should have raised this argument on his petition for writ of certiorari after direct appeal (Opp. at 25) is unavailing and unsupported by case law. The Opposition asserts that "[t]he decision of the court below did not breathe new life into the claim by addressing the merits." (*Id.*) Respondent misses the point. It is the failure of the Mississippi Supreme Court to address this issue on the merits, through procedural machination, that constitutes a violation of Petitioner's due process rights *in addition to* the prosecutorial misconduct that infected Mr. Hodges' trial.[2]

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[2] Similarly, Respondent's argument that the state court's decision rests on "adequate and independent" state law grounds (Opp. at 26) does not respond to the clear demonstration of falsity *(cont'd)*

In short, as demonstrated in the Petition (Petition at 20-30), the Mississippi Supreme Court's refusal to consider the plea hearing transcript based on various interpretations of its procedural rules in resolving Mr. Hodges' prosecutorial misconduct claim violated his due process rights.

CONCLUSION

WHEREFORE, for the foregoing reasons, and those set forth more fully in the Petition, Petitioner Quintez Wren Hodges, respectfully requests that this Court grant his Petition for a Writ of Certiorari.

Dated: September 6, 2007

Respectfully submitted,

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made in the Petition. Nor is Petitioner attempting to overcome a procedural default on federal habeas review.